

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
CELLULAR SOUTH LICENSES, INC.)	CC Docket No. 96-45
)	
Petition for Designation as an)	
Eligible Telecommunications Carrier)	
in the State of Alabama)	

To: The Commission

**OPPOSITION TO MOTION TO DISMISS OR, IN THE
ALTERNATIVE, MOTION FOR EXTENSION OF TIME**

Cellular South Licenses, Inc. (“Cellular South”), by its attorneys and pursuant to § 1.45(b) of the Commission’s Rules (“Rules”), hereby opposes the Motion to Dismiss, or, in the Alternative, Motion for Extension of Time (“Motion”) filed by the Alabama Rural Local Exchange Carriers (“ARLECs”) with respect to Cellular South’s Opposition to Supplement to Application for Review of the Alabama Rural Local Exchange Carriers (“Opposition”). In support thereof, the following is respectfully submitted.

Paradoxically, the ARLECs ask the Commission to dismiss the Opposition because Cellular South complied with the Rules. The ARLECs complain that Cellular South followed § 1.115 of the Rules when opposing a supplement to a pending application for review they filed under § 1.115. *See* Motion, at 1. According to them, Cellular South should have complied with the pleading schedule adopted by the Wireline Competition Bureau (“Bureau”)¹ instead of the rule that binds both the parties and the Bureau. They contend that Cellular South’s compliance with § 1.115(d) renders the Opposition “untimely and unauthorized.” *Id.*

¹*See Parties are Invited to Update the Record Pertaining to Pending Petitions for ETC Designations*, DA 04-999, at 1 (Wireline Comp. Bur. Apr. 12, 2004) (“Update PN”).

Cellular South will not repeat the reasons for its refusal to acquiesce to the *ad hoc* procedures that the Bureau set forth in its *Update PN*. Suffice it to say that the Bureau exceeded the scope of its authority and violated § 1.115 when it invited the ARLECs to supplement their pending application for review.²

Cellular South was authorized to oppose the ARLECs' supplement to their application for Commission review of the Bureau's designation order in *Cellular South Licenses, Inc.*, 17 FCC Rcd 24393 (2002).³ As a matter of fundamental due process, Cellular South had to be given a "meaningful opportunity to be heard" in response to the Supplement. *La Chance v. Erickson*, 522 U.S. 262, 266 (1998). At a minimum, § 1.45 of the Rules gave Cellular South the right to oppose the Supplement. *See* 47 C.F.R. § 1.45(b) ("Oppositions to any motion, petition, or request may be filed"). The only issue is whether the filing period was set by § 1.45 or "otherwise provided" for in the Rules. *See id.* § 1.45.

The Commission has held that the "time limitations" on the filing of an application for review, and subsequent pleadings, are "established solely" by § 1.115(d). *Charles T. Crawford*, 17 FCC Rcd 2014, 2018 n.44 (2002); *Crystal Broadcast Partners*, 11 FCC Rcd 4680, 4680 (1996). That rule specifies that applications for review and supplements thereto shall be filed within 30 days of the public notice of the action taken under delegated authority. *See* 47 C.F.R. § 1.115(d); *Crawford*, 17 FCC Rcd at 2018 n.44. It affords a party 15 days to oppose an application for review and any supplement thereto. *See* 47 C.F.R. § 1.115(d). Thus, Cellular South had 15 days to oppose

²*See* Reply to Response to Motion to Dismiss, CC Docket No. 96-45, at 2-4 (May 28, 2004); Opposition, at 10-11; Reply Comments of Cellular South Licenses, Inc., CC Docket No. 96-45, at 1-11 (June 9, 2004).

³*See* Supplement to the Application for Review of the Alabama Rural Local Exchange Carriers, CC Docket No. 96-45 (May 14, 2004) ("Supplement").

the Supplement, just as it had 15 days to oppose the ARLECs' application for review.

The Supplement was filed on May 14, 2004. Because the May 29, 2004 filing date was a holiday, Cellular South was entitled to file its Opposition on the next business day (June 1, 2004). *See id.* § 1.4(j). That is what Cellular South did. Consequently, the Opposition was timely, as well as authorized, and it is not subject to dismissal.

Alternatively, the ARLECs seek to have the deadline for responding to the Opposition extended until ten days after the denial of their motion to dismiss. *See Motion*, at 2. While it would not have opposed a reasonable request for additional time to respond to the Opposition, Cellular South objects to the grant of what amounts to a contingent request for an indefinite extension of time.

Motions for extensions of time are disfavored,⁴ and are not routinely granted. *See id.* § 1.46. In spite of that, the ARLECs made no effort to show good cause for the Commission to extend the June 16, 2004 deadline for submitting a reply to the Opposition. *See id.* §§ 1.4(h), 1.115(d). Certainly, the fact that the ARLECs appear to be relying on the *Update PN* is not cause to waive the clearly applicable filing deadline.

Prior to filing their Motion, the ARLECs knew that Cellular South was insisting on the enforcement of the clear and unambiguous provisions of § 1.115 (d) of the Rules.⁵ They were also aware that the procedures adopted by the Bureau were contrary to the constraints imposed by § 1.115(d), and that the Commission could enforce that rule, despite their reliance on the Bureau's

⁴*See, e.g., Motions for Extension of Time Before the Common Carrier Bureau*, 46 Radio Reg. (P&F) 2d 96 (Com. Car. Bur. 1978).

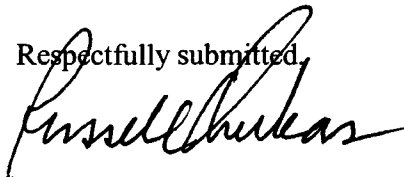
⁵*See, e.g., Motion to Dismiss*, CC Docket No. 96-45, at 1-2 (May 19, 2004).

public notice. *See Hinton Telephone Co.*, 10 FCC Rcd 11625, 11637 (1995). Regardless, they opted to ignore the Commission rule in favor of the Bureau's public notice. Thus, to the extent that the ARLECs are relying on the *Update PN*, they do so at their own risk. *See Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 18 FCC Rcd 7615, 7617-18 (2003). Under these circumstances, the ARLECs have no equitable claim to an extension of the § 1.115(d) deadline in the event the Commission enforces its rule and denies the Motion.

Grant of the requested extension of the deadline will serve only to compound the Bureau's error in departing from the Rules, prolong this proceeding, and cause prejudice to Cellular South. The Commission should abide by § 1.115(d) and deny the ARLECs' contingent request for an extension of time to reply to the Opposition.

For all the foregoing reasons, the Commission should deny the Motion in all respects.

Respectfully submitted,



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June 15, 2004

CERTIFICATE OF SERVICE

I, Kimberly Verven, a secretary in the law office of Lukas, Nace, Gutierrez & Sachs, hereby certify that I have, on this 15th day of June, 2004, placed in the United States mail, first-class postage pre-paid, a copy of the foregoing *Opposition* filed today to the following:

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